

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ELSTER SOLUTIONS, LLC , a North Carolina  
Limited Liability Company,  
Plaintiff,

vs.

THE CITY OF SEATTLE, a municipal  
corporation; SEATTLE CITY LIGHT, a publicly  
owned utility; MUCKROCK FOUNDATION,  
INC., a Massachusetts corporation; and PHIL  
MOCEK, an individual,  
Defendants.

NO. 2:16-cv-00771

**DECLARATION OF ROBERT HENES  
IN SUPPORT OF MOTION FOR  
TEMPORARY RESTRAINING ORDER  
AND ORDER TO SHOW CAUSE  
REGARDING PRELIMINARY  
INJUNCTION**

I, Robert Henes, am over the age of 18, have personal knowledge of all the facts stated herein and declare as follows:

1. I submit this Declaration based on my personal knowledge and my review of corporate records. I am Vice President of Contracts at Elster Solutions, LLC. I have been employed by Elster Solutions, LLC ("Elster") since January 30, 1993. I have worked for over 23 years in connection with the smart grid industry.

2. I understand that Defendants Phil Mocek and the Muckrock Foundation, LLC have requested a complete copy of Elster's bid and proposal materials which Elster submitted in

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1 response to Seattle City Lights Request for Proposal SCL-RFP3404 relating to the delivery and  
2 implementation of an Advanced Metering Infrastructure solution. As discussed in detail in this  
3 Declaration, Elster's bid and proposal materials includes highly confidential, commercially  
4 sensitive, proprietary and trade secret information regarding Elster's equipment, systems,  
5 products, proposed AMI design and implementation, and similarly commercially sensitive,  
6 highly confidential proprietary and trade secret information provided by Elster and its team as  
7 part of its proposal.

8 3. Unfortunately, Elster was not selected by Seattle City Light as the winning proposer –  
9 that honor went to Landis+Gyr. The public and/or Defendants Mocek and MuckRock  
10 Foundation, LLC should have no interest in, or access to, the proprietary, trade secret and  
11 commercially sensitive portions of Elster losing proposal for any legitimate purpose. Elster has  
12 been advised by Seattle City Light that Defendants Mocek and MuckRock have refused to accept  
13 redacted versions of Elster's bid and proposal materials – which are redacted only to protect  
14 trade secret, proprietary and commercially sensitive information contained in Elster's proposal –  
15 despite being provided the same by Elster. Accordingly, Elster is seeking an injunction  
16 preventing the release of the records under the Trade Secret Act and Public Records Act  
17 exemptions until the Court has decided what, if any, information Mocek and MuckRock are  
18 entitled to pursuant to their Public Records Act request which varies or differs from the  
19 information Elster has already offered to release to Defendants.

20 4. Elster's request for an injunction is limited to a subset of documents which are listed  
21 in **Exhibit A** of this Declaration and explained in more detail in the remainder of this  
22 Declaration.

23 5. Generally, AMI technology is an innovative advancement for electric and water  
24 utilities, which traditionally have used meters that require manual reading and input of  
25 information into the utility's systems. Use of AMI technology can improve efficiency and  
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HENES DECLARATION -2  
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1 reliability in these utility services. For example, AMI technology allows information from smart  
2 meters to be transmitted to utility companies electronically. This allows utility providers to  
3 better manage substations, analyze system information, make billing and payment options more  
4 efficient and improve the overall operation of the metering system for the benefit of both the  
5 customer and utility.

6 6. Elster has partnered with more than 115 utilities to deliver successful Smart Grid  
7 solutions. Elster has expended considerable time and resources into developing its innovative  
8 technology and systems. Elster has developed and implemented innovative AMI solutions which  
9 provide state and local governments and utilities with efficient, flexible and technologically  
10 advanced metering systems. Elster's Smart Grid solution, EnergyAxis, supports residential,  
11 commercial and industrial metering for electricity, water and gas, as well as many value-added  
12 features, which include control and management of street lights. Protection of intellectual  
13 property, trade secrets and commercially sensitive and proprietary business information is  
14 necessary to allow Elster to continue to compete in the market place with its innovative and  
15 cutting edge technology.

16 7. In November 2014, Seattle City Light issued its RFP seeking proposals for the  
17 delivery and implementation of an AMI solution. In response to the RFP, Elster, along with its  
18 vendors, prepared a detailed Proposal and submitted it to Seattle City Light for consideration.  
19 Elster spent countless hours and resources developing its Proposal and the proprietary  
20 technologies, methodologies, systems, metrics, data, analysis and pricing set forth in its Proposal.

21 8. Elster's Proposal, which includes Fifteen Sections and 28 attachments and other  
22 supporting documents (as set forth in Exhibit A), contains a company development roadmap and  
23 plan for implementation of an integrated AMI solution. The Proposal contains Elster's detailed  
24 and highly proprietary proposed AMI design and architecture, implementation guides, pricing  
25 data, software and hardware configurations, proprietary metrics, performance enhancements,  
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1 strategic assessments, expected performance characteristics, application user and developer  
2 guides, security guides, equipment and software installation guides, security protocols,  
3 communications system capacity data, scalability analyses and system architecture.

4 9. This information is not generally available to the public, and relates to proprietary  
5 technologies and methodologies that were developed, at great expense, by Elster.

6 10. **Exhibit A** to this Declaration is a detailed chart of the Proposal Sections and  
7 supporting documentation that was submitted by Elster to Seattle City Light as part of Elster's  
8 Proposal. The chart identifies the Section of the Proposal referenced, its category code, the  
9 requested redaction, if any, and the justification for the requested redaction, if any.

10 11. Elster requests that Section 4 (Qualifications) of its Proposal, which contains  
11 personally identifiable information, be redacted at Sections 5a1); 2); and 3). Elster requests that  
12 Section 5d be redacted because it contains a propagation study which would compromise Elster's  
13 ability to compete in the marketplace. Elster requests that Section 5e be redacted because it  
14 contains methods and techniques associated with Elster's security system. This information  
15 could be used by a competitor or used by hackers to exploit weaknesses in Elster's system and  
16 would compromise the security of Elster's customers.

17 12. Elster requests that Section 6 (Proposed Solution) of its Proposal be redacted in its  
18 entirety because this section of the Proposal contains methods and techniques of how Elster's  
19 smart meter technology works and includes how meters communicate with one another. This  
20 Section also contains a systems overview and details of Elster's AMI operation. If made public,  
21 this information would compromise Elster's ability to compete in the marketplace.

22 13. Elster requests that pages 1 and 2 of Section 7 of its Proposal (Coverage Plan) be  
23 redacted because these pages of the Proposal contains methods and techniques of how Elster's  
24 smart meter technology works and includes how meters communicate with one another. These  
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HENES DECLARATION -4  
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1 pages also contain a propagation study which would compromise Elster's ability to compete in  
2 the market place if they were made public.

3 14. Elster requests that Section 9 of its Proposal (Customer Reference) be redacted in its  
4 entirety because this section of the Proposal contains personally identifiable information of Elster  
5 customer employees.

6 15. Elster requests that subsection 2.0 of Section 10 of its Proposal (Project Team) be  
7 redacted because it contains personal information regarding Elster's employees.

8 16. Elster requests that Section 14 of its proposal (Pricing) be redacted in its entirety,  
9 except for the total price given at the end of the section, because this section contains pricing  
10 details for hardware, software and services offered by Elster and the disclosure of this  
11 information to the public would compromise Elster's ability to compete in the marketplace.

12 17. Elster requests that Attachment 12 of its Proposal (EA Security Overview) be  
13 redacted in its entirety because it contains trade secrets including methods and techniques  
14 regarding how Elster smart meter technology works. This Attachment also contains methods and  
15 techniques utilized to maintain Elster's security system and if this information was disclosed to  
16 the public it could compromise the security of Elster's customers.

17 18. Elster requests that Attachment 15 (Backup/Recover Overview) to its Proposal be  
18 redacted in its entirety because it contains technology trade secrets and includes the methods and  
19 techniques of how Elster smart meter technology works. If this information is disclosed it would  
20 compromise Elster's ability to compete in the market place.

21 19. Elster requests that Attachment 17 (SCL Propagation Study) to its Proposal be  
22 redacted in its entirety because this document is a propagation study which could compromise  
23 Elster's ability to compete in the marketplace.

24 20. Elster requests that Attachment 19 (EAMA Out/Rest Mgmt) to its Proposal be  
25 redacted at pages 2 through 9 because this attachment contains trade secrets regarding the  
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1 methods and techniques of how Elster smart meter technology works, including how smart meter  
2 communicate to one another and to the head end system. The release of this information would  
3 compromise Elster's ability to compete in the marketplace.

4 21. Elster requests that Attachment 22 (Elster Roadmap) to its Proposal be redacted in its  
5 entirety because this attachment contains a technology roadmap that includes details of Elster's  
6 long term smart grid product development plans. The release of this information would  
7 compromise Elster's ability to compete in the marketplace.

8 22. Elster requests that Attachment 23 (EA Out/Rest Notification) to its Proposal be  
9 redacted in its entirety because this attachment contains technology trade secrets and includes the  
10 methods and techniques of how Elster smart meter technology works. The release of this  
11 information would compromise Elster's ability to compete in the marketplace.

12 23. Elster requests that Attachment 24 (EAMS Release Notes) to its Proposal be redacted  
13 at pages 1 – 12 and 18 because this attachment contains technology trade secrets and includes the  
14 methods and techniques of how Elster smart meter technology works. The release of this  
15 information would compromise Elster's ability to compete in the marketplace.

16 24. Elster requests that Attachment 26 (Bit Stew Exec Summary) to its Proposal be  
17 redacted in its entirety because this attachment contains technology trade secrets and includes the  
18 methods and techniques of how Elster smart meter technology works. The release of this  
19 information would compromise Elster's ability to compete in the marketplace.

20 25. Elster requests that its file "Managed Services Option" be redacted at pages 2 – 28  
21 because this file contains technology trade secrets and includes the methods and techniques of  
22 how Elster's smart meter technology works. The file also contains a technology roadmap which  
23 contains details of Elster's short term and long term smart grid production development plans.  
24 The release of this information would compromise Elster's ability to compete in the marketplace.  
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HENES DECLARATION -6  
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1 The release of this information could also allow competitors a means to gain a competitive  
2 advantage over Elster by allowing competitors to develop similar products.

3 26. Elster requests that its file “Tropos Info/Pricing” be redacted in its entirety because  
4 this file contains technology trade secrets and includes the methods and techniques of how  
5 Elster’s smart meter technology works. Pricing details for hardware, software and services. The  
6 release of this information would compromise Elster’s ability to compete in the marketplace.

7 27. Elster strictly protects the confidential nature of its proprietary, trade secret  
8 information, including the information set forth above and highlighted in **Exhibit A** to this  
9 Declaration. Elster restricts access to the confidential information contained in its proposal and  
10 strictly limits the dissemination of such information without Elster’s expressed written consent.

11 28. When submitting its Proposal to Seattle City Lights, Elster took the additional steps  
12 to maintain the confidentiality of the Proposal materials it submitted in response to RFP 3404,  
13 including marking applicable pages confidential and using the phrase “proprietary and  
14 confidential”.

15 29. On April 26, 2016, Seattle City Light notified Elster that Mocek had made a public  
16 record disclosure record request for “proposals that were submitted for SCL-RFP-3404,  
17 Advanced Metering Infrastructure” and that Elster’s Proposal would be provided in response to  
18 that request.

19 30. Seattle City Light has stated its intent to release the records to Mocek and MuckRock  
20 on May 26, 2016, unless enjoined from doing so before that date. Elster has communicated its  
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HENES DECLARATION -7  
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1 desire to allow a limited disclosure of its Proposal consistent with **Exhibit A** of this Declaration.  
2 This compromise has been rejected by Defendants Mocek and MuckRock.

3 31. As already set forth herein, the release of Elster's Proposal in its entirety would  
4 damage Elster and significantly impact its ability to compete in the marketplace. See **Exhibit A**  
5 to this Declaration. Also, if Elster faces the release of its information, Elster and similarly  
6 situated companies may elect not to participate in future public bidding in Washington because  
7 of the risk of releasing confidential and proprietary trade secrets which may outweigh the  
8 possibility of being selected as a successful proposer. Elster may not submit bids to public  
9 agencies in other states which rely on the release of trade secrets in Washington to force a release  
10 of similar information. Ultimately, Elster may lose business opportunities through unfair  
11 competition. The public would ultimately be affected by Elster's absence in the bidding process  
12 because the public would have a less competitive bidding process and would lose the opportunity  
13 to benefit from Elster's innovative technologies such as Elster's AMI system and smart grid  
14 solutions which are presently available to public entities located in Washington.

15 I declare under penalty of perjury under the laws of the State of Washington that the  
16 foregoing is true and correct.

17 EXECUTED at Raleigh, North Carolina, this 25<sup>th</sup> day of May, 2016.

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22 Robert Henes  
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HENES DECLARATION -8  
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